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ABSTRACT

This pamphlet presents a statement of principles by the American Civil Liberties Union concerning the civil liberties and obligations of teachers and desirable procedures involving academic freedom in public and private colleges and universities. Academic freedom and responsibility of teachers embraces two distinct areas: (1) the conduct of a teacher apart from specifically professional responsibilities and (2) his conduct in teaching and other activities directly related to professional responsibilities. Included in the pamphlet are the procedures to be taken with the Civil Liberties Union when a professor feels that his academic freedom in either one of these areas has been infringed upon. (HS)

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ACADEMIC FREEDOM
ACADEMIC RESPONSIBILITY
ACADEMIC DUE PROCESS

IN

INSTITUTIONS OF HIGHER LEARNING

A Statement of Principles

Concerning the Civil Liberties and Obligations of Teachers and Desirable Procedures Involving Academic Freedom in Public and Private Colleges and Universities

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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AMERICAN CIVIL LIBERTIES UNION
156 Fifth Avenue, New York, New York 10010

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INTRODUCTION

THIS PAMPHLET is the ninth in a series which the ACLU has prepared through its Academic Freedom Committee. In "The Gag on Teaching" (1932, 1937, 1940), it described state laws concerned with compulsory subjects of instruction, and with the injection of religion and the churches into education. In "What Freedom for American Students?" (1941), it dealt with controls on student activities. In "A Statement of the Principle of Academic Freedom" (1937), and in "Civil Liberties of Teachers and Students — Academic Freedom" (1949), it offered earlier statements of the principles set forth in this pamphlet.

In 1952 it issued "Academic Freedom and Academic Responsibility." "Academic Due Process" appeared in 1954. In 1956 "Academic Freedom and Civil Liberties of Students" was published. And in 1964 it issued "Combatting Undemocratic Pressures on Schools and Libraries." All these have been adopted as formal policy statements by the ACLU; all have been revised from time to time to meet changing conditions and new problems.

The present pamphlet combines the two earlier ones, "Academic Freedom and Academic Responsibility" and "Academic Due Process," with revisions to bring their materials up to date. Although this is addressed primarily to the meaning and protection of academic freedom as it affects teachers in institutions of higher learning, we recognize that administrators play an important role in the creation and maintenance of academic freedom.

The relationship of the ACLU to other organizations which also defend academic freedom should be clearly understood. The ACLU maintains an independent position but has cooperated with such organizations as the National Education Association (NEA), the American Federation of Teachers (AFT), and the American Association of University Professors (AAUP). It has actively supported the American Association of University Professors and the Association of American Colleges in their formulation of joint statements on academic freedom, tenure and due process.

The Academic Freedom Committee of the ACLU acts promptly on issues that warrant its intervention. *Teachers and students are invited to communicate at once with the ACLU or its local affiliates wherever and whenever such issues arise.* Suggestions and advice are provided those who seek the adoption at any institution of policies in accord with the principles here stated.

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PREFACE

THE AMERICAN CIVIL LIBERTIES UNION embodies and expresses a continuing faith in the vital principles of democracy set forth in the Declaration of Independence and in the Constitution of the United States. The Union believes that these principles are dynamic and that they preserve and extend civil liberties through ever-changing conditions. The Union tries to implement this faith in every manner available to it.

Academic freedom in colleges and universities is analogous to civil liberties in the community at large. It enables students and teachers to develop their fullest potentialities while acting as responsible members of a democratic educational system within the larger framework of a democratic society. It assures them the rights of freedom of expression, fair procedures and equality of treatment.

The ACLU exists to protect these rights. Throughout its history it has sought to arouse the public to resist the ever-present demand for orthodoxy and conformity in social, political and economic thought. It has done so because it recognizes the futility and delusiveness of any such orthodoxy. It has sought to preserve in our schools and colleges the traditions of a free marketplace for ideas and the ideal of cultural diversity. These traditions recognize the need for encouraging differences in views and practices, and for deriving benefits from these differences.

Academic freedom does not merely denote rights which are reserved to members of the university community in the event that they choose to exercise them. Unless they are exercised there is no academic freedom. An academic community has an obligation not only to test the received opinions and institutions of its time and society but also to nurture free intellects that will understand and carry on this task.

Since 1925 the ACLU, through its Academic Freedom Committee, has actively championed the rights of free inquiry, fair procedures and equality of treatment when infractions of them or threats of such infractions have occurred. It has fought *against* legislation which restricts academic freedom, and *for* legislation which supports freedom in education. It has opposed the practice of determining curriculum content by means of legislative statute or policy. It has intervened with administrative officials when the occasion required it. It has taken part in protecting the constitutional rights of students and teachers who have engaged in demonstrations. In the courts it has contested expulsion of students and dismissal of teachers when such actions were the consequence of their opinions, associations, or the exercise of their rights as citizens. The ACLU has consistently urged the abolition of the House

Un-American Activities Committee because its inquiries into individual belief and association and its methods of conducting such inquiries violate the freedom and due process guaranteed by the Constitution. Like others, teachers have suffered invasions of conscience and privacy at the hands of this Committee and have been charged with, and sometimes found guilty of, contempt of Congress for failing to answer questions on what they believed to be constitutional grounds. As a result of the adverse publicity generated by these investigations, teachers, like others, have lost their positions and, in some cases, their academic careers have then been terminated. The ACLU has noted, in addition, that the victimization of teachers has particularly grave effects for society, since it constricts the freedom of the university and impairs the quality of education.

Hostile pressures on teachers, educational institutions and educational systems must always be confronted. Sometimes these pressures diminish for brief periods; sometimes, as in the early 1950's, and again today, they appear with more or less renewed intensity. During the early 1950's the activities of the McCarthy Committee were inevitably the primary concern of the ACLU and its Academic Freedom Committee. In that period teachers in particular were singled out for investigation and attack. They became particularly vulnerable because of their duty to submit all ideas to scrutiny and their obligation to encourage students to think about political and economic ideas, however unorthodox, and their right as citizens to associate in societies and groups entertaining such ideas or with people actively committed to them.

Many teachers, their loyalty questioned, were examined by the McCarthy Committee and by similar state legislative bodies. Sometimes administrative action by educational institutions, based solely on the publication of the names of teachers who were under scrutiny or on the fact of their appearance before such committees, took the form of dismissals, forced resignations, and withheld promotions. Teachers who, in their youth, had for brief periods deliberately or unwittingly been associated with the Communist Party or with Communist-front organizations, and who, as a matter of conscience, refused to name those who had been involved in such groups or activities with them, were not only dismissed but were, and sometimes remained, permanently blacklisted. A number of teachers, who had never violated the integrity of the classroom or their commitment as honest scholars, were thereby lost to the profession.

The difficult years of the McCarthy period took a heavy toll and some of its consequences are still with us. There was a definite decline in intellectual and academic freedom. The esteem of teachers in the eyes of the outside world sank to a low point. Many teachers withdrew from participation in social, political and economic associations and discussions. Some admitted

that they resorted to precautionary devices in classrooms and in their writings to allay criticism, censure and the threat of dismissal. Moreover, in a number of states laws were enacted requiring teachers to take loyalty oaths and, in not a few, demanding statements of earlier association with so-called subversive organizations. A number of such laws continue on the statute books.

If pressure upon teachers from legislative committees is not as intense as it was in the 1950's, in the 1960's self-constituted "patriotic" societies and groups are attempting to generate similar pressures. Some of these use the legitimate methods of scrutiny and discussion. Many employ the undemocratic procedures of threats and intimidation: upon teachers themselves; upon governing bodies of educational institutions, whether public or private; upon legislatures where support of such educational institutions comes from public funds.

College teachers once more are being criticized for adopting and supporting so-called controversial positions, personally and professionally. They are being accused of aiding and abetting students who are regarded as rebels. Demands for punishment and dismissal of teachers are becoming frequent and are sometimes heeded by college administrators. Teachers refusing to take loyalty oaths are still being dismissed. Under increasing suspicion are those who back students who seek to re-examine educational procedures or who desire to hear (and argue with!) speakers representing all sorts and shades of leftist and rightist views, and who participate in political and civil rights movements, on campuses and off them. When teachers themselves actively take part in such efforts — particularly in the matter of civil rights — there are warnings and demands for resignations.

These threats to academic freedom and the need for safeguarding and strengthening academic due process prompt the ACLU to issue this new statement which embodies principles it has long advocated. No briefly stated formulas can fit all cases and all problems. Our hope is, however, that general lines of thinking and conduct have been laid out clearly enough to be guides for discussion and decision within academic communities. As already stated, the ACLU is prepared to use its resources — those of the national office and of its many affiliates and chapters throughout the country — to advise and assist when academic freedom or academic due process are challenged or denied. The ACLU does not work exclusively through the court: circumstances in colleges and universities frequently make litigation inadvisable or impossible. Therefore, the ACLU has often used direct negotiation supplemented, when needed, by publicity and the influence of cooperating organizations.

ACADEMIC FREEDOM AND ACADEMIC RESPONSIBILITY

ACADEMIC FREEDOM AND RESPONSIBILITY are here defined as the liberty and obligation to study, to investigate, to present and interpret, and to discuss facts and ideas concerning all branches and fields of learning. No limitations are implied other than those required by generally accepted standards of responsible scholarship. The right within and without institutions of learning to be free from any arbitrary limitations of investigation, expression and discussion should be inviolate.

Outside the academic scene the teacher should have no less freedom than other citizens. He is not required because of his profession to maintain a timorous silence as a price of professional status. On the contrary, his position as a teacher imposes upon him the two-fold duty of advancing new and useful ideas and of examining any doctrine which may be outworn. However, since the public may judge his profession and his institution by his utterances, he should not only maintain high professional excellence but also make clear that he does not speak for the institution of which he is a part. When he speaks or writes as an individual, he should be free from both institutional and public censorship or discipline.

A time of crisis puts pressure on educational institutions to accept and inculcate current official points of view. Yet it is precisely in time of crisis that it is essential democratic strategy to encourage the presentation of contrasting viewpoints and to help students to realize that they are free to draw such conclusions as they think wise. As a member of an academic community and particularly as a teacher, the faculty member should be free to present his own opinions or convictions and with them the premises from which they are derived. Yet it is his duty not to advocate any opinions or convictions derived from a source other than his own free and unbiased pursuit of truth and understanding. Commitments of any kind which interfere with such pursuit are incompatible with the objectives of academic freedom.

The ACLU fosters an open not a censored society. Anti-democratic groups can readily obtain a strong hold upon a society stricken with a fear of ideas. Unless we give renewed enthusiasm and support to traditional American democratic principles and practices, including academic freedom, we are in danger of being victimized by such groups. The concept of academic freedom, like the concepts of most of our other freedoms, does not remain static. It is continually reinterpreted in the light of changing events and conditions.

THE MEANING OF ACADEMIC FREEDOM AND ACADEMIC RESPONSIBILITY FOR TEACHERS

ACADEMIC FREEDOM AND RESPONSIBILITY of teachers embraces two distinct areas: (1) the conduct of a teacher apart from specifically professional responsibilities and (2) his conduct in teaching and other activities directly related to professional responsibilities.

1. When not engaged in specifically professional activities, the teacher has the freedom of any other citizen.

a. Freedom of Association: In his private capacity the teacher should be no less free than any other citizen to participate in political, religious and social movements and organizations, and to hold and to express publicly his political, religious, economic and other views. The fact of his being a teacher should not debar him from activities open to other citizens. On the contrary he should be encouraged to act outside the classroom, library or laboratory.

b. Freedom of Expression: The teacher should be as free as any other citizen to write or speak on any subject which interests him. In the field of his professional competence he should speak (whether in classrooms or elsewhere) and write mindful of the special responsibilities that professional standards impose. When acting as a private citizen, he should make it clear that he speaks, writes, and acts for himself and not for his institution. He should, however, be free to use his academic title for purposes of identification.

c. Freedom to Organize: Like any other professional or non-professional person, the teacher should be free to organize with others to protect group interests, or to join existing unions or other organizations for such purposes, including the right to strike. An administration that seeks to prevent the establishment of such an organization, hamper its activities, or discriminate against its members, infringes on the freedom of teachers.

d. Oaths: So-called loyalty oaths usually focus on disclaimer affidavits or negative oaths which call for denial of membership in, or association with, certain proscribed organizations, usually of the extreme left-wing or right-wing. The ACLU has long opposed such oaths because their criteria inhibit the free exercise of speech and association and act as instruments for conformity. They are an affront to the dignity of the individual. In many instances, they violate due process because of vagueness. Moreover, such oaths are in addition, unfairly discriminatory in their application to teachers who frequently are singled out from other professions in being required to take such an oath.

There are also positive oaths such as one which conditions the obtaining of employment or financial assistance from the government on the swearing to "bear true faith and allegiance to the United States of America and to support and defend the Constitution and laws of the United States against all its enemies, foreign and domestic." Occasionally, such oaths require allegiance to a state's constitution and laws as well. Regardless of the different wording of positive oaths, they condition employment and governmental aid on a declaration of professed belief and thus infringe on civil liberties.

An exception to this position can be made for teachers employed in public institutions. Although the ACLU questions the efficacy of requiring all government employees to subscribe to positive oaths, it does not object to them as the state is entitled to the loyalty of those employed by it. However, the ACLU will oppose such oaths if either by statute or use they are limited to one or more groups of governmental employees, such as teachers, to the exclusion of others.

2. The criteria of performance for a teacher should be those associated with personal and professional integrity in a democratic society.

a. **Professional Independence:** The basic question in this regard is whether colleges and universities of a democracy should be independent institutions guided by professional standards of learning, teaching and scholarship, or whether they should be instruments of current national policy or of other special interests. The ACLU takes the position that the educational system in a democracy should be independent of government control or that of any other special interest and free to act in accordance with its own highest standards.

b. **Criteria of Appointment and Tenure:** A teacher should be appointed solely on the basis of teaching ability and competence in his professional field without regard to such factors as race, sex, nationality, creed, religious or political belief or affiliation, or behavior not demonstrably related to the teaching function. Continuation of appointment and the granting of continuing tenure should depend upon performance as a teacher and scholar. Certain institutions of higher learning (e.g., proprietary or church-affiliated institutions with close denominational identification) may, in making appointments, give special consideration to their distinctive purpose, specifically and narrowly defined, and publicly proclaimed. Nevertheless, the values of academic freedom are paramount in such institutions as in others, and the rights and responsibilities of teachers require full participation and approval by the relevant faculties and departments in the making of appointments and in all aspects of academic due process.

c. Relationship of a Teacher's Views and Associations to his Teaching Position: The central issue in considering a teacher's fitness is his own performance in his subject and his relationship with his students. The ACLU opposes as contrary to academic freedom any regulation or practice which would prohibit the appointment as a teacher of any person solely or in part on the basis of his religious or political views or associations with communist, fascist or any other anti-democratic group. The ACLU believes that even though a teacher may be linked with religious dogmatists or political authoritarians, he must nevertheless be appraised as an individual.

In the classroom, a teacher should promote an atmosphere of free inquiry. This should include discussion of controversial issues without the assumption that they are settled in advance or that there is only one "right" answer in matters of dispute. Studying a philosophy or a social theory for the purpose of approving or denouncing it is not studying it with an open mind. Such discussion should include presentation of divergent opinions and doctrines, past and present, on a given subject. The teacher's own judgment forms a part of this material. If his judgment is clearly stated, his students are better able to appraise it and to differ from it on the basis of other materials and views placed at their disposal than they would be if he were to attempt to conceal his bias by a claim to "objective" scholarship. No set procedures for conduct of a class or for use of materials can guarantee the teacher's own integrity or take its place. The ACLU does not oppose the ouster of any teacher found lacking in professional integrity. It will not defend a teacher duly discharged after proof that he has misused his position to pervert the academic process.

If we accept the views of dominant forces current at any one time or place there will be no end to the tests imposed on the fitness of teachers. Today communists or ultra-rightists are the main target; anarchists, socialists, and the I.W.W were a generation ago; there will be some other main target tomorrow. What we do today to outlaw from teaching members of unpopular organizations creates the precedents by which freedom of teaching can be destroyed. The ACLU stands on the principle that it is far better for our democracy to run the risks of established freedoms than to suffer the proved dangers of repression.

Believing that personal judgment (as against generalized condemnation) is a basic democratic value, the ACLU urges the necessity for appraising the work of the individual teacher. The continuing drives to discover communist teachers, or teachers previously associated with communist organizations, illustrate the dangers of proceeding without specific charges that relate to a person's own conduct. In point of fact few communists have been found in the nation's schools and colleges. But campaigns to expel communists

from educational posts have rarely stopped at their first objective; they have instead usually resulted in attacks upon persons who merely hold unpopular opinions. As a consequence, when such attacks occur, there is a danger that teachers may become less courageous and less independent in the pursuit of truth, more cautious and more subservient.

The harm done by a few teachers who might, undetected, misuse their teaching positions for political or religious ends is far less than the harm that is done by encouraging teachers to be less responsible. The political or religious screening of teachers is far more dangerous to education than the presence of the occasional teacher who is misusing his position. Intelligent, qualified persons are discouraged from going into the teaching profession by the fear that they may be dismissed, or otherwise penalized, for nonconformity.

d. Questioning of Teachers and Administrative Officers: Where there is substantial evidence of perversion of the academic process but only then, a committee of colleagues may in an academic hearing inquire into the beliefs and associations of a teacher, to the extent that they may be relevant to the asserted unprofessional conduct.

The refusal of a teacher or any other academic functionary to answer questions put by a legislative committee does not in itself constitute substantial evidence of perversion of the academic process. The ACLU does not question the obligation of teachers or administrative officers to investigate charges of incompetence or perversion of the academic process made against one of their colleagues whenever and however these may come into issue. But the Union does not believe that any such issue may be said to arise by reason of mere refusal by a teacher or other academic functionary to answer questions put by a legislative committee, however advisable or inadvisable such refusal may be for legal or other reasons.

A teacher asked about another teacher's or a student's views and associations should distinguish among the decisions which he must make. *He may be required* to decide in terms of his legal position as a witness, and on this point he should seek legal advice. *He may wish* to decide by reference to his personal moral code and conscience. *He must* decide in terms of academic freedom because he is a teacher. This last is the ACLU position; questions about another teacher's or student's views or associations are always to be considered improper because they immediately subvert that sense of freedom which is the life center of the academic process.

e. Freedom of Research: As a scholar the teacher should be free to pursue truth and to express his findings in any manner which best conveys his convictions.

THE MEANING OF ACADEMIC DUE PROCESS

NOTE: This entire statement relates to due process in academic proceedings. The general legal *and* specific contractual questions *which may be involved in an academic freedom case are outside the scope of this discussion; these are questions of law which should be handled by the attorneys of the interested parties. Also excluded are the substantive criteria of academic freedom which are presented above and by other organizations.*

AN ACADEMIC FREEDOM CASE in an American school, college, or university involves the rights and responsibilities of both the institution and the teacher, as well as the stake of the community in its educational system. All of these interests are best guarded and served by the application of an established, orderly and fair procedure to the resolution of a case. Good procedure will minimize elements of personal conflict. Good procedure in academic freedom cases has the same excellent rationale that legal due process has in the courts — it substitutes the rule of law for the rule of men.

The ACLU will intervene in appropriate cases involving the discharge of a teacher when action is taken by administrative officials without a prior judgment by the teacher's colleagues concerning his professional fitness. Although the personality and conduct of a teacher cannot be regarded as irrelevant to his professional performance, it is only when they affect his performance in a clearly deleterious fashion that they become appropriate for administrative concern.

Both the administration of an institution and the teacher should carefully consider the manner and degree in which an academic freedom case is publicized. It is true that if academic due process is not being observed, an appeal to public opinion may represent the only possible path to a just judgment. On the other hand, if fair procedures are being followed, excessive or intemperate publicity should be avoided. Such publicity by the administration may create community hostility which will affect (powerfully though irrelevantly) the real issues of competence and integrity. Such publicity by the teacher may likewise result in subordination of the issues of competence and integrity; general community hostility may develop against an institution and its staff, or the particular teacher concerned may find himself required to offer defense against a new and perilously vague charge — that of "conduct unbecoming a teacher."

Warning must be given of an enormous range in the observance of due process. These pages set forth what the Academic Freedom Committee of the ACLU deems to be the best practice. This practice is observed by institutions which recognize the fact that democracy in the constitutional and political structure of the United States calls for an analogous democratic

spirit in the American educational system. Academic due process will be observed by a responsible teacher who recognizes that his personal interest is linked to the interests of his institution and his community. Due process, unfortunately, will be misunderstood or abused by irresponsible and unworthy teachers. The warning should be repeated: the best academic due process is possible only when the institution and the teacher both believe that justice must be based upon orderly procedure.

The principle embodied in the legal concept of confrontation of witnesses and examination of evidence should govern academic due process. The teacher should be informed of all the charges and all the evidence against him; he should be given full opportunity to deny, to refute and to rebut.

Finally, it is a fundamental principle of fairness that charges against a person are to be made the basis of action only when proven, and that the burden of proof rests upon those who bring them. Through the centuries, the courts have applied this principle in the formulation of legal due process, and it should operate with equal force in academic due process. The responsibility for applying this principle in the world of education rests primarily upon the governing board and administration of an institution. Plenitude of power imposes the obligation to keep every step in an academic freedom case untainted by prejudgment.

1. Informal Procedures.

THE ACLU STRESSES THE IMPORTANCE of informal procedures in the settlement of all cases in which academic freedom is involved. The career and livelihood of the teacher are in jeopardy; and the reputation of the institution may also suffer. Therefore, it is especially desirable that administrative authorities of the institution and the teacher, who are the parties to the dispute, seek agreement as far as possible and allow the intervention of third parties for the purpose of resolving their controversy whenever possible without recourse to a formal hearing.

a. Agreement between the parties. Both the institution and the teacher are bound in good faith to seek areas of agreement. Such agreement might well include a joint statement of facts and steps being taken to resolve the controversy. The institution and the teacher should be free to inform organizations interested in academic freedom as to the details of the case.

(1) Negotiation. The parties should make reasonable efforts to settle their dispute by negotiation, through direct discussions in which the administration of the institution indicates the nature of the charges and the grounds upon which they are based, with adequate opportunity for reply and statement of the teacher's position. At these discussions the teacher should have the right to be assisted by an adviser or counsel.

*(2) **Arbitration.*** Arbitration is another method of resolving the controversy toward an agreement. If the parties to the dispute agree to arbitration, the entire controversy, or a selected issue or issues thereof, should be submitted to arbitrators chosen primarily from the academic community. The relevant principles to be drawn upon in the proceeding should include the principles of academic freedom.

b. Intervention of third parties. The parties to the dispute may seek, and organizations interested in academic freedom are free to offer, assistance in informal resolution of any academic freedom controversy. For its part, the ACLU stands ready to offer whatever assistance may be within its capacity for dealing with any specific controversy concerning academic freedom.

The type and extent of assistance offered by third parties may vary greatly, depending upon the issues raised and the circumstances of the dispute. The following patterns of procedure, with appropriate flexibility and adaptability, may be noted:

*(1) **Good offices.*** Third parties can exercise the functions of good offices by serving as a channel of communication or interpreting the principles of academic freedom in efforts to resolve the dispute.

*(2) **Reconciliation.*** Third-party intervention may take the form of a proposal for reconciliation. This includes a suggestion for a delay of formal action to provide a "cooling off" period, and also a formulation of conditions intended to maintain the usefulness of informal procedures for settling the dispute. The parties are required to give consideration in good faith to such reconciliation proposals, though they are not bound to accept them.

*(3) **Conciliation.*** The more active role of conciliation may be taken by a third party in informal settlement in appropriate cases. Where the principles of academic freedom are seriously challenged, or in any case where the parties agree, organizations interested in academic freedom may intercede with either or both parties to urge acceptance in practice of the relevant principles of academic freedom. Such conciliation is successful when it has induced withdrawal by the parties of their conflicting claims or an express settlement by them prior to a formal hearing.

*(4) **Mediation.*** The action of third parties may take the form of mediation, which includes third-party methods of acquiring information about the facts and issues in the controversy and suggestions as to a specific outcome. The distinctive feature of mediation is an induced settlement by the parties, not a disposition of the issues by the mediator. The parties to the academic freedom case may request an organization interested in academic freedom to assume a mediative role in any case, and they must cooperate with the mediators. A mediator, in substantial degree, is independent of the parties to the dispute; he is able to represent the interests of the wider

academic world and the community. Mediation is especially valuable in academic freedom disputes in which local or topical political interests are involved, and where the widest perspectives of academic freedom will serve the long-term interests of both educational institutions and teachers.

Informal procedures of settlement may continue while more formal procedures preliminary to a hearing are being pursued. Exposition of the teacher's point of view may persuade an administration not to challenge his competence and integrity. Presentation of the administration's point of view may persuade a teacher to recognize his duty to cooperate with his institution, and to indicate how he may do so without sacrifice of principle. Presentation of the viewpoint of an organization interested in academic freedom permits both parties to take advantage of a wider perspective where this may be instrumental in resolving the controversy. Any one of these developments, or all of them together, may yield a solution if the participants in informal settlement procedures are moved by genuine good will.

2. Procedure Preliminary to the Hearing.

IN THE PERIOD OF PRELIMINARY ACTION, the administration and the teacher should assist each other in preparing the ground for an orderly and comprehensive hearing. The following actions are generally necessary:

a. **The administration** should present to the teacher a statement meeting the demands of the principle of confrontation of witnesses and examination of evidence, and embodying:

(1) Relevant legislation, board of trustee by-laws and rulings, administrative rulings, faculty legislation, etc.

(2) The charges in the particular case.

(3) A summary of the evidence upon which the charges are based, and a first list of witnesses to be called.

(4) The procedure to be followed, including a statement of the nature of the hearing body.

(5) A formal invitation to attend with adviser or counsel.

(6) A formal invitation to appropriate professional associations to send an observer.

(7) Assurance of adequate time for the preparation of a defense.

b. **The teacher** should select from among his colleagues a person of established position, wisdom and judicial temper, who will act as his official academic adviser, or should select counsel to advise him on legal matters. He may, in his discretion, be assisted by both an academic adviser and a legal counselor. The teacher should inform the administration of the identity of his adviser or counsel and should obtain written agreement to his appearance on the teacher's behalf. (In what follows it is understood that when reference

is made to the teacher, he is deemed to be acting with the assistance of his adviser or counsel.)

c. The teacher should review the statement offered him by the administration (see "a" above); he may wish to supplement "a,1" (applying to rules), or to suggest modification in "a,2" (charges) and "a,4" (procedure); he should indicate the evidence by which he expects to refute the charges and furnish a first list of witnesses he desires to call.

d. The administration and the teacher should, as completely as possible, at this point arrive at agreement on formulation of charges, governing rules and procedure (if proper procedure has not been previously provided for). Such agreement will in no way prejudice, for either party, determination of the case on its merits. On the contrary, it will clarify the issues and make unnecessary at the hearing, or upon appeal, argument as to the *form* of the controversy, thereby permitting full attention to be given to matters of *substance.*

e. Communications, as a general rule, should be in writing, with copies retained. Oral discussion should be followed by an exchange of memoranda indicating the understanding which each party has of the conversation.

3. The Hearing: Tenure Teachers.

ACADEMIC DUE PROCESS provides for summary suspension of a teacher holding tenure only when serious violation of law or public immoral conduct is admitted, or proved before a competent court. If indictments by a grand jury or information handed up by district attorneys are to lead to court trials, a teacher may be suspended with full pay and protection of full rights pending final adjudication. All other charges should first be heard in formal hearing based upon the preliminary action outlined above in section "2." A teacher's rights should not be prejudiced while investigations or hearings of any kind are taking place.

The hearing should take the following form:

a. The hearing committee should be a standing or special group of full-time teaching colleagues, democratically chosen by and representative of the teaching staff and selected by pre-established rules. In establishing these rules and in conducting hearings, the committee should adhere to the principles of academic freedom and due process. The committee should elect its own chairman. The administration should not attempt to influence the hearing committee except through argument presented openly at the hearings. In no case can rights and obligations relevant to due process be considered to have been waived.*

**The governance of some colleges and universities provides only for hearing committees established by the trustees or the president. Efforts should be made by all teachers to bring such practices into conformity with the desirable procedure stated in section "3 a" above.*

b. The teacher should have the right to be present and to have with him an adviser of his own choosing who may act as his representative throughout the hearing. Meetings should be closed unless the teacher requests otherwise.

c. Both the teacher and the administration should have the right to present and examine witnesses and to cross-examine witnesses.

d. The administration should make available to the teacher such authority as it may possess to require the presence of witnesses.

e. The principles of confrontation of witnesses and examination of evidence should apply throughout the hearing.

f. A full record should be taken at the hearing; it should be made available in identical form and at the same time to the hearing group, the administration and the teacher. The cost should be met by the institution.

h. The hearing committee should promptly and forthrightly adjudicate the issues. It should make explicit findings with respect to each charge and present a reasoned opinion.

i. In the absence of a defect in procedure, the conclusions of the hearing committee should be taken as final by the administration and governing board in all matters relating to the teacher's competence and integrity.

j. In the event of a finding unfavorable to a teacher, there should exist established procedures and channels for appeal, eventually leading to the final authority responsible for the control of the institution.

4. The Hearing: Non-Tenure Teachers.

AMERICAN EDUCATIONAL PRACTICE permits great fluidity in the testing of teachers as to their permanent usefulness in a particular institution. This experimental phase of a teacher's career is wisely characterized by a minimum of formal judgment; teachers come and go without recorded praise or blame. Furthermore, non-tenure appointments often fall within the marginal area of an institution's educational and financial program; the dropping of a teacher may have no bearing whatsoever upon his professional capacity. But, although non-retention does not necessarily raise an academic freedom issue, such an issue may be present in non-retention. For example, improper consideration may have been given to non-academic matters, such as a teacher's race, or his religious beliefs and associations. Such improper consideration is a violation of academic freedom and the non-tenure teacher is entitled to all the protections of academic due process.

Action in non-tenure academic freedom cases should take this general form:

a. If the non-tenure teacher believes that improper considerations have unmistakably affected the decision not to retain him, he should, with appropriate advice determine whether he can assemble adequate proof in support of his contention.

b. The teacher should decide whether he is willing to hazard the possible disclosure of professional weaknesses he may have displayed at an early point in his career.

c. If his decisions under "a" and "b" are positive, he should request an opportunity for informal procedures as set forth in section "1" above.

d. If such informal procedures are denied, or unsuccessful, he should then request a formal hearing, in accordance with the procedures outlined above and submit a written waiver of the traditional right of non-tenure teachers to non-disclosure of the grounds upon which they have been denied reappointment.

e. The administration should then grant to the teacher the entire procedure for adjudication set forth above in Sections "1" and "3".

A teacher in an academic freedom case will normally consult local groups, such as his school or college committee on academic freedom and due process, his local chapter of the AAUP, the local of his trade union and his local or state teachers' association. Inquiries about the principles of academic freedom or academic due process may also be addressed to the following national organizations:

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS
1785 Massachusetts Avenue, N.W.
Washington, D.C. 20036

NATIONAL EDUCATION ASSOCIATION
1201 16th Street, N.W.
Washington, D.C. 20036

AMERICAN FEDERATION OF TEACHERS: AFL-CIO
716 North Rush Street
Chicago, Illinois 60611

AMERICAN CIVIL LIBERTIES UNION
156 Fifth Avenue
New York, New York 10010

Price of this pamphlet: 30 cents. Quantity prices on request.